

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

V

THE MOORE CENTER SERVICES

DECISION OF THE HEARING OFFICER

Appearances: Daniel P. Schwarz Esq., Attorney for the Employer

Nature of Dispute: RSA 275:43 I unpaid wages

Employer: The Moore Center Services
195 McGregor St.
Manchester, NH 03103

Date of Hearing: August 21, 2014 (held open until August 29, 2014)

Case No. 48158

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on May 29, 2014. The notice was sent to the employer and there was an objection. The objection was sent to the claimant and there was a request for a hearing. The Notice of Hearing was sent to both parties on July 21, 2014. The employer did make a payment of \$300.00 after the Wage Claim was received. The claimant stated that the Wage Claim was for \$24,700.00.

The claimant testified that she was an hourly employee and was paid \$11.00 per hour up to \$12.00 per hour. She said that she worked for the employer for about three years. The claimant said that she was paid for looking after one child but there were times when she watched two children. She understood that when that happened you received pay for caring for both children. The claimant said that this happened mainly on Fridays and school vacations.

The claimant did say that she was paid for all hours posted on her time sheets. And at times she submitted time sheets for two people. The time sheets were filled out by the mother of the children. The claimant believes that the employer should have kept records when she was alone with the children and paid the premium pay when that happened.

The employer testified that there was an employee assigned to each child. On Fridays there were times when the claimant was watching two children and when this happened and it

was recorded on the time sheet, the claimant was paid appropriately. Once the mother of the children verified on the submitted time sheet that the claimant watched two children, the claimant was paid. Also, if the claimant puts in a time sheet that shows she worked alone with the two children, she was also paid.

The employer further stated that each child receives a grant from the State of New Hampshire and the family is responsible for hiring a companion for each child. The claimant, as a companion, agreed to the family filling out the time sheets.

In this case the employer reviewed all of the time cards and a summary of the payments made to the two designated companions. The family, in this case the mother, agreed to fill out a time card for each child. The employer relies on the time record submitted by the claimant and by the mother of the children. The employer relies on these submissions and a review of the file(s) for this Wage Claim showed that the claimant was underpaid by \$300.00 and this was paid.

FINDINGS OF FACT

RSA 275:43 I. Every employer shall pay all wages due to employees within 8 days including Sunday after expiration of the week in which the work is performed, except when permitted to pay wages less frequently as authorized by the commissioner pursuant to paragraph II, on regular paydays designated in advance by the employer and at no cost to the employee.

803.01 (a). Pursuant to RSA 275:43, I and II, every employer shall pay all wages due to his/her employees within 8 days, including Sundays, after the expiration of the workweek on regular paydays designated in advance. Biweekly payments of wages shall meet the foregoing requirement if the last day of the second week falls on the day immediately preceding the day of payment. Payment in advance and in full of the work period, even though less frequently than biweekly, also meets the foregoing requirement.

This is the section of the law that mandates an employer to pay an employee all wages due at the time the wages are due and owing.

It is the finding of the Hearing Officer, based on the written submissions and the testimony of the parties, that the Wage Claim is invalid. The claimant has the burden to show that there are wages due and owing and she did not meet this burden.

The testimonies show that there was a procedure in place to record time and have the time paid to the employee. This record keeping was completed by the claimant and by the family member of the children included in the grant.

The record also shows that when the claimant did file for working with the two children she was paid for the two children. In fact the employer met with the parties so that this aspect of the program was clear.

The claimant did not show how or the time involved in reaching the Wage Claim amount of \$24,700.00. The employer did find some errors in the records and paid for the errors.

The Wage Claim is invalid.

DECISION AND ORDER

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as this Department finds the claimant failed to prove by a preponderance of the evidence that she was not paid all wages due, it is hereby ruled that the Wage Claim is invalid.

Thomas F. Hardiman
Hearing Officer

Date of Decision: September 19, 2014

Original: [REDACTED]
cc: The Moore Center Services

TFH/klt